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No. 98-221

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

THE LUBRIZOL CORPORATION,
Petitioner,

v.

EXXON CHEMICAL PATENTS, INC.,
EXXON CORPORATION, AND
EXXON RESEARCH AND ENGINEERING CO.,
Respondents.

On Petition for a Writ of Certiorari To The United States Court of Appeals For the Federal Circuit

RESPONDENTS' OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals correctly applied Rule 50(d) of the Federal Rules of Civil Procedure, as interpreted in *Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317 (1967), when it held that respondents were not precluded from filing a new trial motion in the district court with respect to an issue that was not previously decided on appeal?

PARTIES TO THE PROCEEDING

Respondents, Exxon Chemical Patents, Inc., Exxon Corporation, and Exxon Research and Engineering Co., and Petitioner, The Lubrizol Corporation, are the only parties to this proceeding.[1/]

1/ Exxon Corporation is the parent of the other two respondents. The list of Exxon Corporation's non-wholly owned subsidiaries required by Rule 29.6 is in the Appendix to this Opposition.

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RESPONDENTS' OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner ("Lubrizol") argues that the Federal Circuit erroneously applied Fed. R. Civ. P. 50(d), as interpreted in *Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317 (1967), when it held that respondents (collectively "Exxon") could seek a new trial in the district court with respect to an issue that the Federal Circuit had explicitly refused to decide in a prior appeal. Neither *Neely* nor any other decision of this Court or of any other court has ever applied Rule 50(d) to preclude so raising an issue in the district court that the appellate court has not decided. Accordingly, this case presents no issue warranting this Court's review.

STATEMENT OF THE CASE

Trial Proceedings In The District Court

In 1989, Exxon sued Lubrizol for infringing U.S. Patent 4,867,890 (the '890 patent), which claims a motor oil based on Exxon's discovery that a copper additive for such oil produces outstanding antioxidant effects in automobile engines. Exxon argued that the '890 patent was literally infringed by Lubrizol because it used all of the ingredients in the form and amounts specified in Exxon's patent to manufacture its product.

Lubrizol defended by arguing that Exxon's patent, properly construed, did not claim the ingredients used to manufacture motor oil, but instead claimed the ingredients that were ultimately found in the finished product. On this basis, Lubrizol argued that it did not literally infringe Exxon's patent because, after the ingredients were mixed together, the "ashless" dispersant ingredient claimed in the patent complexed with a zinc-containing ingredient and thus was no longer "ashless."

The district judge ultimately instructed the jury that Exxon's patent "claims cover the ingredients which go into the composition." *Exxon Chem. Patents, Inc.* v. *Lubrizol*, 64 F.3d 1553, 1557 (Fed. Cir. 1995) (*Exxon I*) (App. 33a). By that time, it was "essentially uncontested" that Lubrizol literally infringed under this construction of the '890 patent. *Id.* at 1559 n.5. (App. 42a). Exxon, therefore, withdrew its request to instruct the jury that, even accepting Lubrizol's proposed construction of the patent, it infringed under the doctrine of equivalents. *See Warner-Jenkinson Co.* v. *Hilton Davis Chemical Co.*, 520 U.S. 17 (1997) (explaining the difference between literal infringement and infringement under the doctrine of equivalents).

The jury concluded that Lubrizol had literally infringed Exxon's patent. Exxon was later awarded actual damages of $48 million, which were doubled to $96 million under 35 U.S.C. § 284 because of Lubrizol's willful infringement and its obstructive litigation conduct. The district court also awarded Exxon prejudgment interest of $8.7 million and $23.7 million in attorney's fees and costs. (App. 49a-50a).

Lubrizol's Appeal To The Federal Circuit

A Federal Circuit panel majority, over a dissent, agreed with Lubrizol that Exxon's patent claims did not cover "whatever product results from the use of the . . . ingredients" in making the product. *Exxon I*, 64 F.3d at 1557 (App. 39a). However, the panel majority also rejected Lubrizol's contention that, for purposes of literal infringement, the Exxon patent claimed only a final product in which all of the substances listed as ingredients must be found in the form and amounts specified in the patent. *Id.* at 1558 (App. 40a). Under the panel majority's view, Lubrizol would literally infringe, if the ingredients (including the "ashless" dispersant) listed in Exxon's patent were present in the form and amounts

specified in the patent at any time after they were combined during the manufacturing process. *Id.* (App. 42a).

Applying this new, *sua sponte* construction of Exxon's patent, the panel majority concluded that the "ashless" dispersant used by Lubrizol complexed to some extent with a zinc compound when all the ingredients were combined and thus to that extent became "nonashless." 64 F.3d at 1559-60 (App. 42a). On this basis, the Federal Circuit directed judgment for Lubrizol on Exxon's claim of literal infringement "without remand for a second trial." *Id.* at 1561 (App. 45a).

While thus clearly denying Exxon an opportunity for a new trial to prove literal infringement, the panel majority specifically disavowed reaching the question whether Exxon was entitled to a new trial under the doctrine of equivalents. The panel majority stated that "[t]hat issue was not briefed or argued to the panel, and consequently we . . . express no view on that question." 64 F.3d at 1555 n.1 (App. 33a).

Exxon unsuccessfully sought rehearing in the Federal Circuit, 77 F.3d 450 (App. 19a), and later certiorari in this Court, 518 S. Ct. 1020 (1996), arguing, *inter alia*, that the Federal Circuit had erred in reversing the district court without giving Exxon the opportunity to prove literal infringement under the Federal Circuit's *sua sponte* interpretation of Exxon's patent. Exxon did not contend in either this Court or the Federal Circuit that the court of appeals' decision precluded it from seeking a new trial under the doctrine of equivalents. Instead, Exxon took the position that the court of appeals' opinion had not decided that issue, but "out of an abundance of caution" it asked the panel on rehearing to clarify the opinion on this issue. (App 3a). The court did not respond to that request.

Proceedings In The District Court After *Exxon I*

After issuance of the Federal Circuit's mandate, Exxon returned to the district court and filed a motion seeking a new trial under the doctrine of equivalents. The district court denied Exxon's motion solely on the ground that it had "no authority to grant a new trial," in the light of the Federal Circuit's decision in *Exxon I*. (App. 18a).

Exxon's Appeal To The Federal Circuit

Exxon returned to the Federal Circuit, arguing that it had not waived infringement under the doctrine of equivalents in the trial or earlier appellate proceedings, that under the "mandate rule" the district court could grant Exxon a new trial under the doctrine because the Federal Circuit had not decided that issue, and that this Court's decision in *Neely* did not require Exxon to move for a new trial on the doctrine in *Exxon I*.

On March 4, 1998, the court of appeals handed down its decision in *Exxon Chem. Patents, Inc.* v. *Lubrizol*, 137 F.3d 1475 ("*Exxon II*") (App. 1a). It first held "that the mandate did not deprive the district court of the power to grant Exxon's motion for a new trial on infringement under the doctrine of equivalents," because *Exxon I* "was confined to the issue of literal infringement." (App. 1a). The court of appeals also rejected Lubrizol's "suggestion" that Exxon had waived the doctrine of equivalents issue:

> Exxon cannot be charged with having abandoned its doctrine-of-equivalents theory of liability by not submitting it to the jury or raising it on the previous appeal. Once the district judge construed the claim language

> in Exxon's favor, the doctrine-of-equivalents issue in the case became moot.

(App. 5a).

Finally, the court of appeals rejected Lubrizol's argument that *Neely* required Exxon to move for a new trial under the doctrine in *Exxon I*. The court of appeals distinguished *Neely* on the ground that the plaintiff in that case had failed to identify any issues for a new trial in the court of appeals that it had not considered when reversing her judgment. (App. 10a).

Lubrizol sought rehearing both from the panel and the Federal Circuit in banc. As in its petition to this Court, Lubrizol argued solely that the panel had misapplied *Neely*. Without dissent, the court denied rehearing and rejected the suggestion for rehearing in banc. (App. 16a).

REASONS FOR OPPOSING THE WRIT

Lubrizol's petition disregards the dispositive differences between this case and *Neely*. In that case, the court of appeals had decided every issue that plaintiff raised in the litigation when it reversed her judgment without remand for a new trial. In those circumstances, under the "mandate rule" that governs the scope of issues left open to a district court following an appeal,[1] plaintiff would have been barred from returning to

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[1] *See Briggs* v. *Pennsylvania R.R.*, 334 U.S. 304, 306 (1948) (under the "mandate rule" a trial court must obey the mandate of an appellate court); *Piambino* v. *Bailey*, 757 F.2d 1112, 1120 (11th Cir. 1985) (the mandate rule is ultimately "nothing more than a specific application of the 'law of the case' doctrine"); *Quern* v. *Jordan*, 440 U.S. 332, 347, n.18 (1979) ("law of the case comes into play only with respect to issues previously determined"). *See also Exxon Corp.* v. *United States*, 931 F.2d

the district court absent favorable action in the court of appeals upon a new trial motion tendered there.

In this case, the court of appeals held — and Lubrizol tacitly concedes — that Exxon was not barred by the mandate rule from pursuing a new trial with respect to infringement under the doctrine of equivalents, because the court of appeals explicitly refused to decide that issue. In the more than 16 months of briefing and arguing this case in the Federal Circuit and now in this Court, Lubrizol has failed to cite a single case applying *Neely* or Rule 50(d) to bar a new trial where, as here, the mandate rule leaves open to the district court consideration of an issue not reached by the appellate court.[2]

I. THE COURT OF APPEALS CORRECTLY HELD THAT *NEELY* DID NOT REQUIRE EXXON TO SEEK A NEW TRIAL IN THIS COURT.

The court of appeals concluded that *Exxon I* decided "only . . . the issue of literal infringement" and that "[a]ny suggestion that the court meant to address the issue of infringement under the doctrine of equivalents [was] put to rest by the first footnote of the opinion, in which the court explained that the judgment under review was 'limited to

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874, 877, n.7 (Fed. Cir. 1991) (where "the mandate . . . does not address a particular issue, the appellate judgment, on this issue, does not establish the law of the case").

[2] Apparently recognizing that this Court should not expend its resources in receiving briefs and hearing oral argument with respect to the court of appeals' application of *Neely*, Lubrizol at two different points (Petn. 8 & n.5 and 16 & n.9) suggests summary disposition. Such a disposition would be wholly inappropriate in a case, such as this one, where a petitioner seeks to extend the reach of one of this Court's decisions to a question that this Court has never decided.

literal infringement.'" (App. 3a, citing 64 F.3d at 1555 n.1). Accordingly, the panel in *Exxon II*, which included both judges of the panel majority in *Exxon I*, concluded that under the mandate rule the district court was free to consider whether Exxon was entitled to a new trial under the doctrine of equivalents. Lubrizol's failure to challenge the court of appeals' application of the mandate rule is fatal to its *Neely* argument.

In rejecting Lubrizol's argument that *Neely* "establish[es] the broad rule" requiring verdict winners always to seek a new trial on all possible issues in the appellate court (App. 8a), the court of appeals noted this Court's concern in *Neely* with "'protect[ing] the rights of the party whose jury verdict has been set aside on appeal and who may have valid grounds for a new trial . . .'" (*Id.*, quoting 386 U.S. at 325). Thus, the court observed that *Neely* "pointed to" *Weade* v. *Dichmann, Wright & Pugh, Inc.*, 337 U.S. 801 (1949), when it recognized that "'an appellate court may not order judgment *n.o.v.* [now JMOL] . . . where the record reveals a new trial issue which has not been resolved.'" (App. 8a, quoting *Neely*, 386 U.S. at 325).

In this case, it is not merely "the record [that] reveals a new trial issue which has not been resolved." *Id.* Both of the judges of the panel majority in *Exxon I* agreed in *Exxon II* "that this court's [earlier] mandate was not intended to address the question of whether Exxon would be entitled to a new trial under the doctrine of equivalents." (App. 3a).

Neely is dispositively different. As the court of appeals explained, "the issue before the court of appeals [in *Neely*] was the sufficiency of the evidence" and there was no suggestion by plaintiff "that the record was insufficient to present any new trial issue or that any other reason required a remand to the district court." (App. 10a).

The difference between this case and *Neely* is further reflected by *Neely's* approving citation, 386 U.S. at 325, of *Weade*. In *Weade*, as in this case, the court of appeals directed judgment for the verdict loser on the basis of the verdict winner's failure to show liability on one particular theory — *i.e.*, that the respondent exercised "control of the vessel on voyage under [an] agency contract." 337 U.S. at 808. There was, however, another theory of liability supported by "suggestions in the complaint and evidence" that respondent could also be liable under another theory — *i.e.*, its "own negligence while acting as general agent." 337 U.S. at 809. Even though there is nothing in the court of appeals' opinion in *Weade* indicating that a new trial was requested on that alternative theory,[3] this Court modified the decision of the court of appeals to give plaintiff the opportunity to seek a new trial on that issue. It is simply impossible to reconcile Lubrizol's assertion that *Neely* lays down a "broad rule" requiring a verdict winner always to move for a new trial in the appellate court with *Neely's* discussion of *Weade*.[4]

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[3] *Dichmann, Wright & Pugh, Inc.* v. *Weade*, 168 F.2d 914 (4th Cir. 1948).

[4] Lubrizol disingenuously misreads *Neely* as excusing the failure to seek a new trial with respect to the undecided issue in *Weade* on the ground that Rule 50(d) was not adopted until 1963. (Petn. 7, 13). In fact, the Court held in *Neely* that Rule 50(d) "makes express and adequate provision for the opportunity — *which the plaintiff-appellee had without this rule* — to present his grounds for a new trial in the event his verdict is set aside by the court of appeals." *Neely*, 386 U.S. at 329 (emphasis supplied). Lubrizol's argument that *Neely* "specifically distinguished" *Weade* (Petn. 7) based on the subsequent adoption of Rule 50(d) rests upon a truncated quotation of *Neely*, that omits the emphasized words which show that the plaintiff in *Weade* could have moved for a new trial in the appellate court.

II. LUBRIZOL MISUNDERSTANDS THE RELATIONSHIP BETWEEN RULE 50(d) AND THE MANDATE RULE.

The court of appeals correctly held that "[t]he primary question in this case, as in all such cases, is what the appellate court's mandate left for the district court to do." (App. 11a). The court of appeals concluded that "our mandate left the district court free to consider Exxon's motion for a new trial on infringement under the doctrine of equivalents." (*Id.*). That would *not* have been the case in *Neely*.

As noted, the court of appeals in *Neely* had decided every issue which the case presented; unlike *Weade* and *Exxon I*, there was no suggestion that unresolved alternative theories of liability remained to be decided.[5] In those circumstances, absent a successful motion for new trial in the appellate court, the mandate rule barred the district court from giving the plaintiff another opportunity to prove her case because all of the issues had been decided against her in the appellate court.

Under the mandate rule, Exxon was similarly precluded from seeking a new trial in the district court on its literal infringement theory, absent a successful Rule 50(d) motion in the appellate court on that theory, because *Exxon I* had decided that issue. But as the court of appeals held — and as Lubrizol does not dispute — Exxon was not precluded by the mandate rule from seeking a new trial in the district court on

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[5] Specifically, the court of appeals in *Neely* had held that "the evidence at trial was insufficient to establish either [defendant's] negligence . . . or [the] proximate cause" necessary to impose liability upon the defendant. 386 U.S. at 319-20. The plaintiff in *Neely* offered no alternative theories as to the imposition of liability upon defendant other than negligence or proximate cause.

the doctrine of equivalents because *Exxon* v. *Lubrizol I* did not decide that issue.

Rule 50(d) did not, *sub silentio*, change the mandate rule. Instead, the rule provides:

> If the motion for [JMOL] is denied, the party who prevailed on that motion may, as appellee, assert grounds entitling the party to a new trial in the event the appellate court concludes that the trial court erred in denying the motion for judgment. If the appellate court reverses the judgment, nothing in this rule precludes it from determining that the appellee is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.

Consistent with its plain language — which is "permissive," *Neely*, 386 U.S. at 324, not mandatory — this Court in *Neely* characterized Rule 50(d) as providing "the *opportunity*" for a verdict winner to "present his grounds for a new trial" in the appellate court, 386 U.S. at 329 (emphasis added). And as the court of appeals stated in quoting *Neely*, Rule 50(d) was "not intended to 'alter the effects of a jury verdict or the scope of appellate review.'" (App. 10a, quoting 386 U.S. at 324).

Thus, nothing in *Neely* or the language of Rule 50(d) suggests that the rule is a preclusive device that sweeps beyond the contours of the mandate rule itself: It provides an "opportunity" for a new trial motion when it is necessitated by the mandate rule, as in *Neely*; it does not impose a *requirement* in cases, like this one and *Weade*, where the mandate rule leaves an issue open to the district court.

Lubrizol's argument that the court of appeals "Adopted Justice Black's Dissent in *Neely*" (Petn. 12-14) misreads both the lower court's opinion in this case and the dissent in *Neely*. In Justice Black's view, "under [this Court's] prior decisions and Rule 50, a court of appeals . . . is entirely powerless to order the trial court to dismiss the case, thus depriving the verdict winner of any opportunity to present a motion for new trial to the trial judge . . . ." 386 U.S. at 331. Thus, Justice Black argued that a court of appeals could *never* deprive a judgment-winner of the right to seek a new trial in district court. The court of appeals in this case, by contrast, recognized that "*Neely* . . . stands for the proposition that in an appropriate case a court of appeals may direct that judgment be granted against an appellee without permitting the appellee to seek a new trial from the district court." (App. 10a).

III. LUBRIZOL'S ARGUMENT IS NOT SUPPORTED BY ANY CASE LAW.

None of the cases upon which Lubrizol relied below interpreted *Neely* as requiring a new trial motion in the appellate court as to issues left open by the mandate rule. All of those cases dealt with issues that were actually decided on appeal and thus were precluded by the mandate rule. *See Colorado Interstate Gas Co.* v. *Natural Gas Pipeline Co.*, 962 F.2d 1528, 1534 (10th Cir. 1992) ("the panel in *CIG II* intended to, and did, resolve all the issues presented to it"). Starkly reflecting its inability to support its argument with case law, Lubrizol's petition fails to cite a single case where

Neely has been applied to bar arguments that the mandate rule leaves open to a district court.[6]

Moreover, in a decision cited by Exxon below but ignored by Lubrizol in its petition, this Court just last term refused to apply *Neely* in holding that a party who had lost an earlier appeal could pursue a new trial on an issue that the court of appeals had not previously decided. *Hetzel* v. *Prince William County*, ___ U.S. ___, 118 S. Ct. 1210 (1998) (per curiam). While this Court's opinion (rendered without merits briefing or oral argument) distinguished *Neely* on the ground that it dealt with the sufficiency of evidence on liability instead of damages, *Hetzel* clearly stands against the "broad rule" that Lubrizol mistakenly argues is imposed by *Neely*.

IV. LUBRIZOL'S POLICY ARGUMENTS ARE WITHOUT MERIT.

The policy arguments that Lubrizol makes in support of its petition — *e.g.*, that "new issues . . . will always be raised in the district court, post-appeal, even in the absence of a remand" and that verdict winners may "'lay low' on appeal, keeping alternative theories of liability hidden from sight" — are far-fetched and wholly unsupported by the record here. (Petn. 14).

Exxon persuaded the court of appeals that it should have an opportunity to raise the doctrine of equivalents issue in the district court because Exxon had not waived that issue at trial or on appeal and because the court of appeals had not decided

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[6] Substituting rhetoric for authority, Lubrizol refers to the court of appeals' "unprecedented ruling" interpreting *Neely*. (Petn. 2). As far as Exxon can determine, it is Lubrizol's argument that is "unprecedented," given the fact that no court has ever applied *Neely* to bar arguments that the mandate rule leaves open.

the doctrine of equivalents issue. The issue was not waived and it was not decided in the court of appeals because Lubrizol chose to "lay low," not even mentioning infringement under the doctrine in its briefing and argument of *Exxon I*. Had Lubrizol sought JMOL in the court of appeals on the doctrine, Exxon would have briefed that issue, the court could have decided it, and the mandate rule would dictate what issues were open to the district court.

The relevant policy arguments were concisely stated by the court of appeals and they condemn Lubrizol's argument:

> [T]he rule that Lubrizol proposes would place undue additional burdens on both the parties and on the appellate court . . . . As a practical matter, the first opportunity that [Exxon had] . . . to make its arguments for a new trial [was] in a petition for rehearing, and rehearing petitions are not normally a suitable vehicle for making new arguments to the appellate court.

(App. 12a). Thus, as the court below concluded, "this case is a paradigmatic example of the kind of case in which it would be improper for the appellate court to dispose of the new trial issues, and in which the proper forum for raising the new trial issue in question is the district court." (*Id.*).

CONCLUSION

For the reasons stated above, Lubrizol's petition for certiorari should be denied.

Respectfully submitted,

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APPENDIX

RULE 29.6 LISTING

Exxon Corporation's subsidiaries, other than wholly-owned subsidiaries, are:

165550 Canada Limited
172746 Canada Inc.
172965 Canada Limited
AAI Assets, Inc.
Abu Dhabi Petroleum Company Limited
Acquifund Resources Limited
Aditivos Orinoco de Venezuela (Adlnoven) C.A.
Adria-Wien Pipeline Gesellschaft mit beschraenkter Haftung
Advanced Elastomer Systems Brasileira, Ltda.
Advanced Elastomer Systems Hong Kong Limited
Advanced Elastomer Systems Japan Limited
Advanced Elastomer Systems Limited
Advanced Elastomer Systems Marketing Pte. Ltd.
Advanced Elastomer Systems NV/SA
Advanced Elastomer Systems Singapore Pte. Ltd.
Advanced Elastomer Systems, Canada, Inc.
Advanced Elastomer Systems, Inc.
Advanced Elastomer Systems, L.P.
AFSC Management Limited
AFSC Operations Limited
AFSC Refueling Limited
AGES Arbeitsgemeinschaft Gebuehrenentrichtungssystem gmbH & Co.
AGES Arbeitsgemeinschafts-Gebuehrenentrichtungssystem GmbH
AIR TANKDIENST KOELN GbR
Aircraft Fuel Supply B.V.
Al-Jubail Petrochemical Company
Alberta Products Pipe Line Ltd.
Alyeska Pipeline Service Company
Aramco Services Company

Asakawa Sekiyu K.K.
ASHCO Ltd.
Aviation Fuel Supply Company
Awaji Gas Nenryo Kabushiki Kaisha
Azerbaijan International Operating Company
Azuma Sekiyu K.K.
Bangkok Aviation Fuel Services Public Company Limited
Banshu Ekika Gas K.K.
Bayerische Erdoelleitung GmbH
BEB Erdgas und Erdoel GmbH, Hannover
Berlin Fuelling Services GbR
Bitumes Tunis S.A.
BONDY ESSENCE
Brickwood Holdings Pty. Ltd.
BRIGITTA Erdgas und Erdoel GmbH, Hannover
Cameroon Oil Transportation Company S.A.
Canada Imperial Oil Limited
Canadian Marine Response Management Corporation
Canadian Reserve Oil & Gas Ltd.
Castle Peak Power Company Limited
Cerafilter Systems, Inc.
Cerafilter Systems, L.P.
CeraMem Separations, Inc.
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Changi Into-Plane Services (Pte) Ltd.
Chuo Sekiyu Hanbai K.K.
Compagnie Industrielle des Polyethylenes de Normandie, GIE
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliaire du Petrole
Computer Centrum Groningen B.V.
Cynthia Gas Gathering Company Limited
D15 (Groep) B.V.
Daihatsu Sekiyu K.K.
DEMICO S.A.R.L.
Depot Petrolier du Gresivaudan
Depots de Petrole Cotiers

Depots Petroliers de la Corse
Deudan GmbH & Co. KG
DEUDAN GmbH, Kiel
Deudan-Holding GmbH
Deutsche Advanced Elastomer Systems GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dex Plastomers
Dexco Polymers (General Partnership)
DFTG Deutsche Fluessigerdgas Terminal GmbH
Disma S.r.l.
Dixie Pipeline Company
ESF Limited
Eagle Reinsurance Co. Ltd.
East Asia Response Private Limited
East Texas Salt Water Disposal Company
Eastern Canada Response Corporation Ltd.
EDE China LLC
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdoel GmbH, Hannover
Elwerath-Mobil AG
Emirates National Chemical Company Ltd.
Emori Sekiyu K.K.
Emsland-Erdoelleitung G.M.b.H.
Energie Dienstleistungs Wuppertal GbR
Energie Dienstleistungs Wuppertal GmbH
Energie Marketing Service GmbH
Energy Chemicals (Malaysia) Sdn. Bhd.
Enterprise Housing Partners 1992 Limited Partnership
Entrepot Petrolier de Mulhouse (E.P.M.)
EPDMCO, L.P.
Erdgas-Verkaufs-Gesellschaft m.b.H.
Erdgasgemeinschaft GbR
Erdoel-Raffinerie Deurag-Nerag GmbH
Esso (Overseas) Pension Trust Limited

Esso (Thailand) Public Company Limited
Esso Antilles-Guyane, S.A.
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Exploration and Production Ireland Limited
Esso France, S.A.
Esso Lub'Services
Esso Lubrifiants Tunisie S.A.
Esso Malaysia Berhad
Esso Raffinage S.A.F.
Esso Sinochem (Ningbo) Petroleum & Petrochemicals Supply Co. Ltd.
Esso Societe Anonyme Francaise
Esso Standard Tunisie S.A.
Etablissements Cloarec
ETD Tankdienst Gesellschaft Duesseldorf GbR
Exxon Asset Funding Company
Exxon Asset Management Company
Exxon Chemical Asset Management Partnership
Exxon Chemical France
Exxon Chemical Paraffins Limited
Exxon Chemical Polymeres SNC
Exxon Chemical S.A.
Exxon de Colombia S.A.
Exxon Mobile Bay Limited Partnership
F.T. Giken Kabushiki Kaisha
Federated Pipe Lines (Northern) Ltd.
Federated Pipe Lines (Western) Ltd.
Federated Pipe Lines Ltd.
Ferngas Nordbayem G.m.b.H.
Ferngas Salzgitter GmbH
Fernkaelte Geschaeftsstadt Nord G.b.R.
Fina Antwerp Olefins N.V.
Flughafen Schwechat Hydranten-Gesellschaft
FSF Flughafen Schwechat Flugzeugbetankungs GmbH
Fuji Kogyo K.K.

G16a (Groep) B.V.
Gardermoen Fuelling Services AS
Gasunie Engineering B.V.
Gasunia Warmte/Kracht Emmen B.V.
General Bussan K.K.
General Energy Development K.K.
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha
Geogaz Lavera
Gesellschaft fuer Mineraloeiveredlung und Distribution Rhaesa mbH
Gewerkschaft Brassert Erdoel und Erdgas GmbH
Gewerkschaft Gute Hoffnung Erdgas und Erdoel GmbH
Gewerkschaft Kuechenberg Erdgas und Erdoel GmbH
Glen Park Gas Pipe Line Company Limited
Grande Ecaille Land Company, Inc.
Great Lakes Response Corporation of Canada
Groupement d'Exploitation du Depot de Reception de Chennevieres
Groupement Immobilier Petroleir
Groupement Petrolier Aviation
Groupement Petrolier de la Cote d'Azur
Groupement Petrolier de Nantes (G.P.N.)
Groupement Petrolier de Saint-Pierre des Corps (G.P.S.P.C.)
Groupement Petrolier du Finistere G.I.E.
Groupement Petrolier du Val-de-Marne (G.P.V.M.)
Guam Response Services Ltd.
GVOE Gebinde-Verwertungesellschaft der Mineraloe/wirtschaft MbH
Hambrecht & Quist Environmental Technology
Hamburger Gaswerke GmbH
Hankyu Ferry K.K.
Hankyu Service K.K.
Hannoversche Erdoelleitungs-G.m.b.H.

Hanshin Kyowa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokuyu Sekiyu K.K.
Hong Kong Pumped Storage Development Company, Limited
Hong Kong Response Limited
Houston Regional Monitoring Corporation
Hydranten-Betriebs-Gesellschaft GbR
Imperial Oil (an Ontario General Partnership)
Imperial Oil Limited
Imperial Oil Resources an Alberta limited partnership
Imperial Oil Resources Limited
Imperial Oil Resources N.W.T. Limited
Imperial Oil Resources Ventures Limited
Industria Acqua Siracusana S.p.A.
Iraq Petroleum Company, Limited
Japan Butyl Company Limited
Japan PolyChem Corporation
Jersey Nuclear-Avco Isotopes, Inc.
Jinzhou Jinex Lubricant Additives Co., Ltd.
K.K. Momose Shioliri Stand
K.K. Nilmi Kirun
K.K. Aizu General
K.K. Auto
K.K. Daimaru
K.K. Eastern Gas Terminal
K.K. General Gas Butsuryu Kanto
K.K. General Sekiyu Hanbaisho
K.K. Genet
K.K. Genetech
K.K. Genex
K.K. Heian Sekiyu
K.K. Kyoei Shosha
K.K. Marutaka Sekiyu
K.K. Momose Sekiyu

K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Tama General
K.K. Uwano Sekiyu Shokai
K/S Statfiord Transport A/S & Co.
Kabushiki Kaisha Kanki
Kai Tak Refuellers Company Limited
Kansai Chuo Sekiyu K.K.
Kanto Kygnus K.K.
Karlsruhe-Stuttgart Rohrieitung Gesellschaft mit beschraenkter
Kawasaki Kyngus Sekiyu Hanbai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kemcor Australia Pty. Ltd.
Kemcor Elastomers Pty. Ltd.
Kemcor Olefins Ltd.
Kemcor Plastics Pty. Ltd.
Kemcor Resins Pty. Ltd.
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobbaby Pty. Ltd
Kobe Standard Sekiyu K.K.
Korea Perchem Company Limited
Kowa Sekiyu K.K.
Kumho Polychem Co., Ltd.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Sekiyu K.K.
Kygnus Sekiyu Seisei Kabushiki Kaisha
Kygnus Trading Kabushiki Kaisha
Kyushu Eagle K.K.
L-Net East K.K.
L-Net West K.K.
L12A (Groep) B.V.
L12B/L15B (Groep) B.V.
L15A (Groep) B.V.
L2 (Groep) B.V.

L4c (Groep) B.V.
L5a (Groep) B.V.
L9a (Groep) B.V.
L9b (Groep) B.V.
Les Dockes des Petroles d'Ambes
Les Emulsions de Feyzin et du Dauphine
Liants Routiers de Bourgogne (L.R.B.)
Liants Routiers de la Vallee de la Loire (LRVL)
Liants Routiers de la Vallee du Rhin (L.R.V.R.)
Liants Routiers du Gard (L.R.G.)
Lilac Sekiyu Kabushiki Kaisha
Lily Sekiyu K.K.
Lithcon Petroleum International (Bahamas) Inc.
Longhorn Partners Pipeline, L.P.
Maasvlakte Olie Terminal C.V.
Maasvlakte Olie Terminal N.V.
Magota Sekiyu K.K.
Mainline Pipelines Limited
Malaysian Energy Chemical & Services Sdn Bhd
Manchester Airport Storage and Hydrant Company Limited
Marugo Gas K.K.
McColl-Frontenac Inc.
McColl-Frontenac Petroleum Inc./Petroliere McCol-Frontenac Inc.
MEGAL FINCO
MEGAL GmbH
Meili Sekiyu K.K.
Mineraloelraffinerie Oberrhein GmbH & Co. KG
Mineraloelraffinerie Oberrhein Verwaltungs GmbH
Mitake Unso K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschraenkter
Mode Wheel Property Limited
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
Mount Thorley Coal Loading Limited
Multi Tank Card B.V.

Mytex Polymers (General Partnership)
N.V. Nederlandse Gasunie
Nalco/Exxon Energy Chemicals Argentina S.A.
Nalco/Exxon Energy Chemicals Brasil LTDA
Nalco/Exxon Energy Chemicals Canada, Inc.
Nalco/Exxon Energy Chemicals Colombia S.A.
Nalco/Exxon Energy Chemicals Limited
Nalco/Exxon Energy Chemicals Marketing Ltd.
Nalco/Exxon Energy Chemicals Mexico, S.A. de C.V.
Nalco/Exxon Energy Chemicals Middle East Holdings, Inc.
Nalco/Exxon Energy Chemicals Venezuela, C.A.
Nalco/Exxon Energy Chemicals, Inc.
Nalco/Exxon Energy Chemicals, L.P.
NAM-K14 B.V.
NAM-K15 B.V.
NAM-K7 B.V.
NAM Pipeline B.V.
NAM-K17 B.V.
NAM/CLOMS-K8/K11 B.V.
NAM/CLOMS-L13 B.V.
NAM/MOBIL M9a B.V.
Nansei Sekiyu Kabushiki Kaisha
Nanseki Kaihatsu K.K.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B.V.
NETRA GmbH
NETRA GmbH Norddeutsche Transversale & Co. KG
New Cure, Inc.
Newcastle Coal Shippers Pty. Limited
Nichiei Kogyo Kabushiki Kaisha
Niedersaechsische Energie Agentur GmbH
Nikko Sangyo K.K.
Ningbo Yanggongshan Petrochemical Wharf Company Ltd.
Nippon Unicar K.K.
Nissei Sekiyu Kabushiki Kaisha
Nogat B.V.

Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Nordrheinische Erdgas Transport Gesellschaft mit beschraenketer
Noroxo
Northward Developments Ltd.
NPC Services, Inc.
Office Prive d'Assurances et de Courtages
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Spill Holdings Private Limited
Oil Spill Response Limited
Oldenburgische Erdoel Gesellschaft m.b.H.
Osaka General Gas K.K.
Osaka Kygnus K.K.
OSLO Alberta Limited
Oslo Lufthavns Tankaniegg AS
Pacesetter Enterprises Limited
Parts Investment Corporation
Paxon Polymer Company, L.P. II
Plantation Pipe Line Company
Port-Jerome Gaz (P.J. Gaz)
Portland Pipe Line Corporation
Primaeroel GmbH
Prince William Sound Oil Spill Response Corporation
ProGas Limited
Projectbureau W/K B.V.
Q16a (Groep) B.V.
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S.A.
Rexplas Sdn Bhd
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rotterdam Antwerpen Pijpleiding (Belgie) N.V.
Rotterdam Antwerpen Pijpleiding C.V.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Rubiatec Sendirian Berhad

Ruhrgas Aktiengesellschaft
S.A. du Pipeline a Produits Petroliers sur Territoire Geneve
Saba Sociedade Abastecedora de Aeronaves Lda.
Saitama Sekiyu Hanbai K.K.
Sanyo Sekiyu K.K.
Saraco S.A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
SEAG Aktiengesellschaft fuer schweizerisches Erdoel
Senboku Oil Kikoh K.K.
SERAM S.p.A.
Service Aviation Paris (S.A.P.)
Shehtah Drilling Limited
Shimizu LNG K.K.
Shin-Nihon Yukagaku Kogyo K.K.
Shinohara Oil K.K.
Singapore Aromatics Company Private
Smiley Gas Conservation Limited
Sociedad de Inversiones de Aviacion Limitada
Sociedad Nacional de Oleoductos Ltda.
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azloni Raffineria Padana Olii Minerali -SARPOM
Societe Anonyme "Produits Lubrifiants de Madagascar" -PROLUMA
Societe Anonyme de Gestion de Stocks de Securite (SAGESS)
Societe Anonyme de la Raffinerie des Antilles
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Decets
Societe d'Etude et d'Exploitation de la Raffinerie du Tchad
Societe d'Exploitation & de Developpement d'Operations Commerciales
Societe de la Raffinerie d'Alger
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Promotion et de Financement Touristique (CARTHAGO)

Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Societe Esso de Recherches et d'Exploitation Petrolieres Esso
Societe Francaise EXXON CHEMICAL
Societe Groupement des Commercants du Centre Commercial Regiona
Societe Havraise de Manutention de Produits Petroliers
Societe Malgache de Raffinage
Societe Paris-Niel
Societe Reunionnaise d'Entreposage
SOGEP S.A. Societe Genevoise des Petroles
Southern Natural Gas Development Pty. Ltd.
Standard Kaihatsu K.K.
Standard Service K.K.
Stansted Fuelling Company Limited
Statfjord Transport A/S
Sucre Gas, S.A.
Sueddeutsche Erdgas Transport Gesellschaft mit beschraenkter
Sun East (Dublin) Company, Ltd.
Syncrude Canada Ltd.
Taichung Petroleum Inc.
Taihei Bussan K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tama General K.K.
Tankanlage A.G., Mellingen
Tanklager Altishausen A.G.
Tanklager Taegerschen AG
Tanklager-Gesellschaft Tegel (TGT) GbR
TANKLAGERGESELLSCHAFT KOELN-BONN GbR
TAR-Tankanlage Ruemlang AG
TBF Tanklager Betriebsfuehrungsgesellschaft m.b.H.

TBG Tanklager-Betriebsgesellschaft mbH
TBN Tanklager-Betriebsgesellschaft Nuernberg mbH
TCA Plastics Inc.
TEAM Terminal B.V.
Telasto Folien GmbH
Terminal Petroleier de Bordeaux (T.P.B.)
TGF Tankdienst Gesellschaft Frankfurt GbR
TGM Tankdienst-Gesellschaft Muenchen GbR
Thai Aliphatics Company Limited
Thai C-Center Company Limited
Thai Petroleum Pipeline Co., Ltd.
Thyssengas G.m.b.H.
Tiba Speditions GmbH
Timan Pechora L.L.C.
TLS Tanklager Stuttgart GmbH
Tohpren Co., Ltd. (Chemical)
Tojo Gas K.K.
Tokai Chuo Sekiyu K.K.
Toko Sekiyu K.K.
Tonen Chemical Nasu Co., Ltd.
Tonen Energy and Marine (Singapore) Pte. Ltd.
Tonen Energy International Corp.
Tonen Filare Co. Ltd.
Tonen Film Company Limited
Tonen Kabushiki Kaisha
Tonen Kagaku K.K.
Tonen Sogo Service Co., Ltd.
Tonen Tanker Kabushiki Kaisha
Tonen Tapyrus Company Limited
Tonen Technology K.K.
Tonex Company Limited
Towa Compounding Co., Ltd.
Toyoshina Film Company, ltd.
Trans-Northern Pipelines Inc.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Tsurumaru Unyu K.K.

Turbo Fuelling Services GbR
UBAG-Unterflurbetankungsanlage Flughafen Zurich
Ulan Coal Mines Limited
United Industry Development Co., Ltd.
Univation Technologies, LLC
Van Salt Water Disposal Company
VEI Limited Partnership
Verbundnetz Gas AG
Westdeutsche Erdoelleitungs-G.m.b.H.
Western Canada Marine Response Corporation
Worex S.N.C.
Yasaka Sekiyu I.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.